

U.S. Department of Justice  
Executive Office for Immigration Review  
Immigration Court

### Matter of

File A 45 031 495

Before SARAH M. BURR, Immigration Judge

Date: July 22, 1998 Place: New York, New York

Transcribed by DEPOSITION SERVICES, INC. At Rockville, Maryland

Official Interpreter:

Language:

### Appearances:

For the Immigration and  
Naturalization Service:

Benita Sinha, Esquire

For the Respondent:

Mark Broydes, Esquire

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1 JUDGE FOR THE RECORD

2 Today is July 22, 1998, this is Immigration Judge Sarah  
3 Burr in New York City. This is a removal proceeding in the  
4 matter of Stanislaw Pszeniczny, file number A 45 031 495. The  
5 respondent's present in court with his attorney Mr. Broydes. The  
6 Government's represented by Ms. Sinha.

7 JUDGE TO MR. BROYDES

8 Q. Counsel, do you waive a Polish interpreter for  
9 Master Calendar?

10 A. Yes.

11 Q. All right.

12 JUDGE FOR THE RECORD

13 I have Mr. Broydes written statement with regard to the  
14 charges against the respondent. I have read it. I am not  
15 persuaded by it. Based upon the documents that have been marked  
16 into evidence the court finds that the respondent is removable as  
17 charged as both an alien smuggler and as an aggravated felon.  
18 With regard to the aggravated felony charge I refer specifically  
19 to Exhibits 3A, Exhibits 4, and Exhibits 5, which clearly show  
20 that the people who were smuggled into the United States were not  
21 family members of the respondent. I don't believe that he's  
22 eligible, he's certainly not eligible for voluntary departure or  
23 for cancellation of removal.

24 JUDGE TO MR. BROYDES

25 Q. Mr. Broydes, are you aware of any relief available

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1 to your client?

2 A. Not at this point.

3 Q. All right.

4 JUDGE TO COUNSEL

5 Q. Is there anything else from either side before I  
6 enter my order?

7 A. (Ms. Sinha) No, Your Honor.

8 JUDGE TO MR. BROYDES

9 Q. Mr. Broydes, anything else?

10 A. No, Your Honor.

11 JUDGE RENDERED ORAL DECISION

12 JUDGE FOR THE RECORD

13 That is my decision and order.

14 JUDGE TO COUNSEL

15 Q. Does either side wish to reserve their right to  
16 appeal?

17 A. (Ms. Sinha) No, Your Honor.

18 JUDGE TO MR. BROYDES

19 Q. Mr. Broydes, do you wish to reserve your right to  
20 appeal?

21 A. (Mr. Broydes) I do reserve.

22 Q. All right. Mr. Broydes, you have 30 days to  
23 appeal. That is on or before August 21, 1998. I'm handing you a  
24 short form order and I'm going to also hand you the limitations  
25 on discretionary relief should your client fail to surrender for

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1 removal at the time and place ordered by the Immigration and  
2 Naturalization Service.

3 JUDGE TO MR. PSZENICZNY

4 Q. Sir, do you understand English?

5 A. (Indiscernible).

6 JUDGE TO MR. BROYDES

7 Q. All right, Mr. Broydes, please advise your client  
8 of the warnings that are contained on the limitations on  
9 discretionary relief. Please advise him that he's been ordered  
10 removed. All right? Mr. Broydes, are you listening to me?

11 A. Yes, Your Honor. I just want to say that I speak  
12 Polish language and I can do that.

13 Q. All right, that's fine, but I'm not going to use  
14 you as an interpreter in court, but I assume as an officer of the  
15 court that you will so advise your client of all of the  
16 limitations on discretionary relief if he fails to surrender for  
17 removal at the time and place ordered by the Immigration and  
18 Naturalization Service. Will you do that?

19 A. Yes, Your Honor. I'm just saying that I can do  
20 it.

21 Q. Here's a copy of the short form order and the  
22 limitations on discretionary relief and please note at the bottom  
23 of the order is the appeal date, appeal due by August 21, 1998.

24 JUDGE FOR THE RECORD

25 This hearing is closed. Thank you.

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1 (OFF THE RECORD)

2 (ON THE RECORD)

3 JUDGE FOR THE RECORD

4 We're back on the record. I'm handing counsel the  
5 appeal forms for the Board of Immigration Appeals.

6 HEARING CLOSED

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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
New York, New York

File No.: A 45 031 495

July 22, 1998

In the Matter of )  
 )  
STANISLAW PSZENICZNY, ) IN REMOVAL PROCEEDINGS  
 )  
Respondent )

CHARGES: Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, in that the respondent has been convicted of an aggravated felony; Section 237(a)(1)(E)(i) of the Immigration and Nationality Act, in that the respondent has within five years of the date of his entry knowingly encouraged, induced, assisted, abided, or aided another alien to enter the United States in violation of law.

APPLICATIONS:

ON BEHALF OF RESPONDENT:

Mark Broydes, Esquire  
299 Broadway  
Suite 1820  
New York, New York 10007

ON BEHALF OF SERVICE:

Benita Sinha, Assistant  
District Counsel  
New York District

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent was admitted to the United States on June 4 of 1996, as a lawful permanent resident (see Exhibit 3).

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Slightly over six months later, on January 16 of 1997, the respondent was arrested in upper New York State near the Canadian border. He was charged with alien smuggling (see Exhibits 3A and 4). On June 24 of 1997, the respondent plead guilty in the United States District Court for the Northern District of New York to one count of alien smuggling in violation of 8 U.S.C. Section 1324(a)(1)(A) (see Exhibit 2).

As a result of this conviction, the respondent was placed in removal proceedings. The respondent through his attorney has admitted allegations 1, 2, 3, and 5 contained in the Notice to Appear. This court has found, based upon the respondent's concessions and based upon the Exhibits marked into evidence, that the respondent is removable as charged.

In spite of the argument advanced by counsel, the record clearly establishes that the respondent is removable both as an alien smuggler and as an aggravated felon. The criminal judgment states that the respondent plead guilty to one count of alien smuggling in violation of the United States law (see Exhibit 2). Contrary to counsel's argument that his client is not guilty of alien smuggling because he did not cross the United States Canada border to bring undocumented people into this country, it is clear from the statute and the criminal complaint that it is unnecessary for the respondent to have actually crossed the border in order for he himself to be guilty of alien smuggling. (See Exhibit 3A and 8 U.S.C. Section 1324(a)(1)(A)).

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With regard to the aggravated felony charge it is equally clear from Immigration and Nationality Act Section 101(a)(43)(N) that a person convicted of alien smuggling is an aggravated felon unless it is a first offense and it involves the smuggling of a spouse, child, or parent. The two individuals whom the respondent helped to smuggle into the United States are not family members as evidenced by the Exhibit 3A, 4, and 5.

The respondent has not applied for any relief from removal and does not appear to be eligible for any relief. Accordingly the following order will be entered.

ORDER

IT IS HEREBY ORDERED that the respondent be removed from the United States to Poland based upon the charge under Section 237(a)(2)(A)(iii) and under Section 237(a)(1)(E)(i).

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SARAH M. BURR  
U.S. Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before  
SARAH M. BURR in the matter of:

STANISLAW PSZENICZNY

A 45 031 495

New York, New York

was held as herein appears, and that this is the original  
transcript thereof for the file of the Executive Office for  
Immigration Review.

[REDACTED]  
\_\_\_\_\_  
(Kathy A. Hollar, Transcriber)

Deposition Services, Inc.  
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\_\_\_\_\_  
September 23, 1998  
\_\_\_\_\_  
(Completion Date)